



2024:DHC:4793



***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 27.03.2024
Judgment pronounced on: 28.06.2024

+ CM(M) 197/2019 & CM APPL. 48567/2023

RAM KISHAN

..... Petitioner

Through: Mr. Prasouk Jain, Ms. Rabita Thakur
and Mr. Anurag Sharma, Advocates.

versus

M/S EMAAR MGF CONSTRUCTIONS PVT LTD Respondent

Through: Mr. Arjun Jain and Mr. Rohit Mehla,
Advocates

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. Before advertng to the controversy at hand, it is necessary to refer to facts in brief being, the petitioner is the proprietor of M/s Shiv Aluminum & Glass and is engaged in the business of supply and installation of glass, its materials and items. The respondent approached the petitioner in 2010 for placing work orders for installation of glass façade for various sites in the Common Wealth Games Village. The said work orders were placed on multiple dates and materials were duly supplied and installed at the sites as per the arrangement reached by the parties. Payments were made from time to time to the petitioner till 17.08.2011. However, a sum of Rs. 12,00,580/- was due against the respondent which remained unpaid despite raising



repeated request for payment. Aggrieved, petitioner served a legal notice dated 25.04.2014 seeking payment of the aforesaid due amount.

2. In the absence of any fruitful outcome of the legal notice sent by the petitioner, the petitioner instituted the suit for recovery of Rs. 17,87,858/- along with interest, against the respondent before the learned Additional District Judge, Patiala House Courts, New Delhi (hereinafter referred as “Trial Court”), which is stated to be currently at the stage of plaintiff’s evidence and plaintiff/PW-1 is under cross-examination.

3. Notably, the issues in the suit were framed on 12.03.2015. Later in the course of proceedings, the petitioner on 13.09.2017, moved an application under Section 151 of Code of Civil Procedure, 1908 (hereinafter referred as “CPC”) seeking to file on record a certificate under Section 65B of the Indian Evidence Act, 1872 (hereinafter referred as “IEA”) to support the Statement of Account, around which the present petition revolves. Reply to the said application was also filed by the respondent.

4. It is the case of the petitioner that inadvertently, at the time of filing the suit, he did not file the certificate under Section 65B IEA in support of his computerized Statement of Account due to lack of knowledge. Thus, the petitioner moved an application under Section 151 CPC before the learned Trial Court thereby praying that the certificate under Section 65B IEA be taken on record, which was filed along with the said application.

5. The learned Trial Court vide the impugned order dated 26.07.2018 dismissed the said application on the ground that cross-examination of PW-1 has already been started. Thus, the present petition has been filed before this



court invoking the supervisory jurisdiction of this court under Article 227 of the Constitution of India, seeking intervention with the impugned order passed in Civil Suit No. 55511/2016 titled as “*Ram Kishan v. Emaar MGF*”, pending adjudication before the learned Trial Court.

6. The learned counsel for the petitioner submitted that the learned Trial Court ignored the basic principle of law that the matter should be tried on merits and technicalities should not come in the way of justice. Moreover, petitioner would suffer irreparable loss and injury if the certificate under Section 65B IEA is not taken on record and hence, impugned order is liable to be set aside.

7. Learned counsel for petitioner submitted that no prejudice would have been caused to the respondent, if the said application would have been allowed as the matter is still at the stage of plaintiff’s evidence and evidence of plaintiff/PW-1 is ongoing and thus, the said certificate would easily be taken on record.

8. Learned counsel for the respondent refuted the submissions of the petitioner by stating that the said application is without any cause of action, hence, is liable to be dismissed as the same does not satisfy the ingredients of Section 151 CPC as parties should not be allowed to file any document at any stage of the pleadings as they deem fit and proper.

9. Learned counsel for the respondent submitted that during the cross-examination of PW-1, counsel for the respondent did put a specific question to PW-1 regarding absence of certificate under Section 65B IEA and the reply of PW-1 clearly depicts that filing of the present certificate is an



afterthought and cannot be taken on record given the stage of cross-examination.

10. Learned counsel for the respondent further submitted that the certificate now sought to be placed on record cannot be read in evidence in favor of the petitioner as the present case has been going on for 3 years now and the petitioner had been subjected to successive cross-examination on various dates and petitioner had ample time and opportunity to place on record the requisite certificate before the learned Trial Court but he did not diligently pursue his remedies.

11. Learned counsel for the respondent submitted even otherwise, the certificate sought to be placed on record by the petitioner does not fulfil the law laid down for valid certificate as prescribed under the law of evidence and hence, the application is liable to be dismissed.

12. To conclude the arguments, learned counsel for the respondent submitted that the petitioner has made out the ground that he has received legal advice only after his cross-examination was recorded and pursuant thereto, he preferred the application which got rejected. The ground itself is incorrect since the petitioner was not acting in person and was always appearing through counsel. Learned counsel further submitted that under the garb of the instant petition, petitioner is trying to overcome the lacuna in the cross-examination of PW-1 which is underway. Reliance is placed upon the judgment of this Court in *Adarsh Gaur vs. State of NCT of Delhi & Another.*: 2023 SCC OnLine Del 8058.



13. Filing an application under Section 151 CPC to bring documents on record after the plaintiff's evidence has started is a nuanced matter. The court may allow documents to be brought on record, if it is essential to meet with the ends of justice. The document must be significant enough that excluding it would cause injustice to the concerned party.

14. In the case of ***Ram Rati v. Mange Ram***, AIR 2001 SC 2143, wherein the Hon'ble Supreme Court emphasized that documents should be allowed to be brought on record if they are necessary for a just decision of the case, provided that the opposite party is given an opportunity to rebut the evidence.

15. In ***Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal & Ors.*** (2020) 7 SCC 1m the Hon'ble Supreme Court has held as under:

“52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. [Anvar P.V. v. P.K. Basheer: (2014) 10 SCC 473; (2015) 1 SCC (Civ) 27; (2015) 1 SCC (Cri) 24; (2015) 1 SCC (L&S) 108], this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case.”

16. The Hon'ble Supreme Court while referring to the case of ***State of Karnataka vs. M.R. Hiremath***: (2019) 7 SCC 515 in the case of ***State of***



Karnataka vs. T. Naseer alias Nasir alias Thandiantavida Naseer alias Umarhazi alias Hazi & Others: 2023 SCC OnLine SC 1447 has further held:

“10. In State of Karnataka v. M.R. Hiremath, 2019(7) SCC 515, this Court after referring to the earlier judgment in Anwar’a case (supra) held that the non-production of the Certificate under Section 65B of the Act is a curable defect. Relevant paragraph ‘16’ thereof is extracted below:

“16. The same view has been reiterated by a two-Judge Bench of this Court in Union of India v. Ravindra V. Desai, (2018) 16 SCC 273. The Court emphasised that non-production of a certificate under Section 65-B on an earlier occasion is a curable defect. The Court relied upon the earlier decision in Sonu v. State of Haryana, (2017) 8 SCC 570 in which it was held:

*‘32. ... The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the court could have given the prosecution an opportunity to rectify the deficiency.’
(Emphasis added)*

11. Coming to the issue as to the stage of production of the certificate under Section 65-B of the Act is concerned, this Court in Arjun Panditrao Khotkar’s case (supra) held that the certificate under 65-B of the Act can be produced at any stage if the trial is not over.”

17. In view of the settled law, the certificate under Section 65B IEA which as terms of general procedure should have been filed by the petitioner along with the Statement of Accounts at the time of filing of the suit. However, the non-filing of the certificate under Section 65B IEA at the relevant stage is a curable defect which could be removed by allowing to place the said certificate subsequently on record.

18. Needless to say, the filing of the certificate under Section 65B IEA is a matter of procedure and by not allowing the same to be taken on record amounts to taking a hyper technical view which is against the settled



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preposition of law as cited above. Accordingly, the impugned order dated 26.07.2018 is set aside.

19. Petitioner is permitted to place on record the certificate under Section 65B IEA with respect to the Statement of Accounts in accordance with law, subject to cost of Rs. 15,000/- to be paid to the respondent on the next date of hearing fixed before the learned Trial Court.

20. In view of above, petition along with pending application stands allowed.

SHALINDER KAUR, J.

JUNE 28, 2024

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